

INSTRUCTION SHEET  
PETITION FOR DESTRUCTION OF INDICIA OF ARREST  
OR EXPUNGEMENT OF RECORDS  
UNDER TITLE 11 DEL. C. §4371-4374

**PLEASE REVIEW ATTACHED §4372 TO BE SURE YOUR CASE QUALIFIES FOR  
EXPUNGEMENT**

- The petition must be filed in the County where the case was terminated, disposed of or concluded.
- If the arrest occurred in Kent County or Sussex County, you should contact the Prothonotary Office in that County for a copy of the correct form.  
Kent County 1-302-739-3184    Sussex County 1-302-856-5740
- If petitioner was a minor (under 18 years of age) at the time of arrest, the petition must be obtained and filed in Family Court in the proper county. If petitioner is an adult arrested under the jurisdiction of Family Court, refer to Family Court's 10 Del. C. §1025.

I. FILING INSTRUCTIONS:

- A. No petition will be accepted for filing unless all forms are completed, signed, notarized and stapled together in proper order.
1. The "set" of forms includes:
    - a) the Petition
    - b) order
    - c) verification
    - d) affidavit of mailing - ONLY required if processing by mail
- B. After completing the set and before making the copies:
1. Have the verification form notarized
  2. Have the affidavit of mailing form notarized, if applicable
  3. Make four (4) copies of the entire set
- C. If hand delivering, take the original set and two (2) copies of the set to:

Attorney General's Office  
Carvel State Building  
820 French Street  
Wilmington, DE 19801

The Attorney General will keep two (2) copies and will stamp the original as being received on that date. The stamped original set will be returned to you. Take to the Prothonotary's Office:

1. The stamped/receipted original set
2. Two (2) copies of the set (made previously)
3. \$75.00 filing fee

D. If completing by mail:

Mail two (2) copies of completed forms to the Attorney General's Office. Send the original petition with affidavit of mailing, two (2) copies of the petition, and \$75.00 filing fee to the Prothonotary's Office.

II. COURT PROCEDURES:

- A. The Prothonotary will docket and maintain the petition until the Department of Justice sends a letter to the Court indicating its position. The Prothonotary will send the petition to the Criminal Office Judge, who will grant or deny the petition.
- B. If the Attorney General opposes the petition, a letter may be sent to the court by petitioner or petitioner's attorney, if any, requesting that a hearing be scheduled.
- C. If the petition is granted, the Prothonotary will deliver, by regular mail, certified copies of the signed order to the petitioner or petitioner's attorney, the Department of Justice, the Delaware State Police, the local arresting police agency, the criminal department of the Prothonotary's Office, and any other agency so directed by the order.
- D. Approximately eight (8) weeks are needed to completely process the petition.

**IF YOU HAVE ANY QUESTIONS REGARDING THIS PROCEDURE**

**PLEASE CALL THE CIVIL DIVISION AT 302-255-0823**

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE  
IN AND FOR NEW CASTLE COUNTY

\_\_\_\_\_  
Petitioner

vs

Civil Action No. \_\_\_\_\_

STATE OF DELAWARE,

Respondent.

VERIFICATION

STATE OF DELAWARE:

COUNTY OF NEW CASTLE:

BE IT REMEMBERED that on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, personally appeared before me, a Notary Public for the State and County aforesaid, (name) \_\_\_\_\_, Petitioner in the foregoing action, who, being duly sworn by me, did depose and say that he/she is the Petitioner in the foregoing action and the facts recited in the Petition are true and correct to the best of his/her knowledge and belief.

\_\_\_\_\_  
Petitioner

SWORN TO AND SUBSCRIBED before me the day and year aforesaid.

\_\_\_\_\_  
Notary Public

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

AFFIDAVIT OF MAILING

\_\_\_\_\_  
Petitioner

vs

Civil Action No. \_\_\_\_\_

STATE OF DELAWARE,

Respondent

I, \_\_\_\_\_, do hereby certify that I have mailed a copy of the document within  
to the following addresses:

Attorney General's Office  
Carvel State Building  
820 French Street  
Wilmington, DE 19801

and

Office of the Prothonotary  
Superior Court  
500 N. King Street  
Suite 1500, Lower Level 1  
Wilmington, DE 19801-3746

postage prepaid, by regular mail, this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Affiant

SWORN TO AND SUBSCRIBED before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

\_\_\_\_\_  
Petitioner

vs

Civil Action No. \_\_\_\_\_

STATE OF DELAWARE,

Respondent

PETITION FOR EXPUNGEMENT OF CRIMINAL RECORD

Pursuant to 11 Del. C. § 4372, \_\_\_\_\_, hereby petitions this Honorable Court for  
(Name)  
expungement of their criminal record. In support of this Petition, Petitioner shows that:

1. Full name at time of arrest: \_\_\_\_\_

2. Current address: \_\_\_\_\_  
\_\_\_\_\_

3. Date of Birth: \_\_\_\_\_

4. Telephone Number: ( ) \_\_\_\_\_

5. On or about (date) \_\_\_\_\_, Petitioner was arrested by the:

(Indicate by "X", the arresting agency).

\_\_\_\_\_ Delaware State Police Troop No. \_\_\_\_\_

\_\_\_\_\_ New Castle County Police

\_\_\_\_\_ Wilmington Police

\_\_\_\_\_ Newark Police

\_\_\_\_\_ University of Delaware Police

\_\_\_\_\_ Elsmere Police

\_\_\_\_\_ Other (name of arresting agency) \_\_\_\_\_

List all charges: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Indicate by "X", all courts associated with the arrests).

\_\_\_\_\_ Superior Court

\_\_\_\_\_ Municipal Court/Court of Common Pleas

\_\_\_\_\_ Newark Alderman's Court

Justice of the Peace Courts:

\_\_\_\_\_ No. 9 - 5355 Summit Bridge Road

\_\_\_\_\_ No. 10 - 210 Greenbank Road

\_\_\_\_\_ No. 11 - 61 Christiana Road

\_\_\_\_\_ No. 12 - 212 Greenbank Road

\_\_\_\_\_ No. 13 - Carvel State Office Building

\_\_\_\_\_ No. 14 - 1010 Concord Avenue

\_\_\_\_\_ No. 15 - c/o JP Court 11 (temporary)

\_\_\_\_\_ No. 18 - 1301 E. 12 Street (Gander Hill)

6. The disposition of the charge(s) previously listed is as follows:

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7. The Petitioner has no prior criminal record. Furthermore, the continued existence and possible dissemination of information relating to the arrest of Petitioner causes, or may cause, circumstances which constitute a manifest injustice to Petitioner.

WHEREFORE, Petitioner prays that this Court enter an order directing:

A. That all indicia of arrest contained in the police records and the Court records relating to the previously mentioned charges be expunged and removed from the files and placed in the control of the supervisor of the State Bureau of Identification as provided for in 11 Del. C. §4374.

B. That certified copies of this Court's Order be delivered to the Petitioner, the Delaware Department of Justice, The State Bureau of Identification, the Delaware State Police and (arresting agency) \_\_\_\_\_ and court(s) as indicated.

C. That a certified copy of this Court's Order be forwarded to the Prothonotary for the Superior Court of the State of Delaware in and for New Castle County.

D. That the Department of Justice and the Prothonotary of the Superior Court of the State of Delaware in and for New Castle County take appropriate steps to see that all records not destroyed pursuant to this Order be handled in such a manner as to insure that they not be opened to public inspection, or disclosure.

E. That it shall not be necessary for (name) \_\_\_\_\_ to report or acknowledge in any manner whatsoever his arrest on the previously mentioned charge(s).

\_\_\_\_\_  
Petitioner or Petitioner's Attorney

DATE:

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

\_\_\_\_\_  
Petitioner

vs

Civil Action No. \_\_\_\_\_

STATE OF DELAWARE,

Respondent

ORDER

AND NOW, TO WIT, this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, it appearing that Petitioner, was born on \_\_\_\_\_, and resides at \_\_\_\_\_, and has no other criminal record except as set forth herein; and it appearing that Petitioner was arrested on \_\_\_\_\_ by \_\_\_\_\_ on charge(s) of \_\_\_\_\_ and it appearing that the charge(s) (were/were not) transferred to the Superior Court and assigned criminal action numbers \_\_\_\_\_ and it appearing that the charge(s) were disposed of as follows: \_\_\_\_\_ and it appearing that the Petitioner now seeks to have all indicia of arrest on the aforesaid charge(s) expunged; and it appearing that the Attorney General has been served with the Petition herein, and that the Attorney General has no opposition thereto;

**IT IS SO ORDERED:**

1. That all indicia of arrest contained in the police records and the Court records relating to the above-mentioned charge(s) be expunged and removed from the files and placed in the control of the supervisor of the State Bureau of Identification as provided for in 11 Del. C. §4374.
2. That certified copies of this Court's Order be delivered to the New Castle County Prothonotary, Petitioner or Petitioner's Attorney, the Delaware Department of Justice, the State Bureau of Identification, the Delaware State Police, (arresting agency) \_\_\_\_\_ and court(s) as indicated.
3. That the Department of Justice and the Prothonotary for the Superior Court of the State of Delaware in and for New Castle County take appropriate steps to see that all records not destroyed pursuant to this Order be handled in such a manner as to insure that they not be opened to public inspection or disclosure.
4. That it shall not be necessary for (Petitioner's name) \_\_\_\_\_ to report or acknowledge in any manner whatsoever the arrest(s) on the above-mentioned charge(s).

\_\_\_\_\_  
JUDGE

DELAWARE CODE ANNOTATED  
TITLE 11. CRIMES AND CRIMINAL PROCEDURE  
PART II. CRIMINAL PROCEDURE GENERALLY  
CHAPTER 43. SENTENCING, PROBATION, PAROLE AND PARDONS  
SUBCHAPTER VII. EXPUNGEMENT OF CRIMINAL RECORDS

**§ 4371 Statement of policy.**

The General Assembly finds that arrest records can be a hindrance to an innocent citizen's ability to obtain employment, obtain an education or to obtain credit. This subchapter is intended to protect innocent persons from unwarranted damage which may occur as the result of arrest and other criminal proceedings which are unfounded or unproven.  
(62 Del. Laws, c. 317, § 2.)

NOTES, REFERENCES, AND ANNOTATIONS

"Innocent." -- While the word "innocent" should be broadly interpreted in order to give meaning to both this section and § 4373(a) of this chapter, since a prior conviction only establishes prima facie evidence that manifest injustice would not result from retention of records of nonconviction arrests, it does not follow that "innocent" should be construed as to include a pardon in light of the fact that § 4372 of this chapter permits expungement only in three specific circumstances. *State v. Skinner*, Del. Supr., 632 A.2d 82 (1993).

**§ 4372 Termination of criminal action in favor of accused.**

(a) If a person is charged with the commission of a crime and  
(1) Is acquitted; or  
(2) A nolle prosequi is taken, or the charge is otherwise dismissed, the person may file a petition setting forth the relevant facts and requesting expungement of the police records, and the court records relating to the charge.

(b) The petition shall be filed in the Superior Court in the county where the case was terminated, disposed of or concluded.

(c) A copy of the petition shall be served on the Attorney General, who may file an objection or answer to the petition within 30 days after it is served on the Attorney General.

(d) Notwithstanding any provision to the contrary, the Attorney General or designee responsible for prosecuting a criminal action may petition the court to expunge the instant arrest record of a defendant if at the time of a state motion to dismiss or entry of nolle prosequi in the case, the prosecutor has determined that the continued existence and possible dissemination of information relating to the arrest of the defendant for the matter dismissed or for which a nolle prosequi was entered may cause circumstances which constitute a manifest injustice to the defendant.

(62 Del. Laws, c. 317, § 2; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 150, § 5.)

NOTES, REFERENCES, AND ANNOTATIONS

Effect of amendments. -- 72 Del. Laws, c. 150, effective July 12, 1999, added (d).

"Innocent." -- While the word "innocent" should be broadly interpreted in order to give meaning to both § 4371 and § 4373(a) of this chapter, since a prior conviction only establishes prima facie evidence that manifest injustice would not result from retention of records of nonconviction arrests, it does not follow that "innocent" should be construed as to include a pardon in light of the fact that this section permits expungement only in



three specific circumstances. *State v. Skinner*, Del. Supr., 632 A.2d 82 (1993).

Circumstances where expungement permitted. -- This section is carefully drafted; it permits expungement only in limited circumstances such as acquittal, nolle prosequi or other dismissal, consistent with its intent to protect innocent persons. *State v. Skinner*, Del. Supr., 632 A.2d 82 (1993).

Construction with other sections. -- A person who is discharged from probation before judgment, pursuant to 11 Del. C. § 4218, is eligible to seek expungement pursuant to this section. *Ryan v. State*, Del. Supr., 791 A.2d 742 (2002).

Effect of subsequent pardon. -- Defendant's subsequent pardon did not remove the underlying criminal conviction for expungement purposes. *State v. Skinner*, Del. Supr., 632 A.2d 82 (1993). This section permits expungement of arrest and court records only when the underlying charge has been terminated through an acquittal or dismissal; while a pardon may remove the effect of a conviction, it may not provide standing to secure expungement of the arrest records. *State v. Skinner*, Del. Supr., 632 A.2d 82 (1993).

### **§ 4373 Hearing by Court; granting or denial of expungement.**

(a) Unless the Court believes a hearing is necessary, petitions shall be disposed of without a hearing. If the Court finds that the continued existence and possible dissemination of information relating to the arrest of the petitioner causes, or may cause, circumstances which constitute a manifest injustice to the petitioner, it shall enter an order requiring the expungement of the police and court records relating to the charge. Otherwise, it shall deny the petition. However, the Court shall grant

petitions filed by the Attorney General or his or her designee pursuant to § 4372(d) of this title. The fact that the petitioner has previously been convicted of a criminal offense, other than that referred to in the petition, shall be considered by the Court as prima facie evidence that the continued existence and possible dissemination of information relating to the arrest in question does not constitute a manifest injustice to the petitioner.

(b) The State shall be made party defendant to the proceeding. Any party aggrieved by the decision of the Court may appeal, as provided by law in civil cases.

(c) If an order expunging the records is granted by the Court, all the records specified in the order shall, within 60 days of the order, be removed from the files, and placed in the control of the Supervisor of the State Bureau of Identification who shall be designated to retain control over all expunged records, and who shall insure that the records or the information contained therein is not released for any reason except as specified in this subchapter. In response to requests from nonlaw-enforcement officers for information or records on the person who was arrested, the law-enforcement officers and departments shall reply, with respect to the arrest and proceedings which are the subject of the order, that there is no record.

(62 Del. Laws, c. 317, § 2; 72 Del. Laws, c. 150, § 6.)

### **NOTES, REFERENCES, AND ANNOTATIONS**

Effect of amendments. -- 72 Del. Laws, c. 150, effective July 12, 1999, inserted the present fourth sentence in (a).

"Innocent." -- While the word "innocent" should be broadly interpreted in order to give meaning to both § 4371 of this chapter and subsection (a) of this section, since a prior conviction only establishes

prima facie evidence that manifest injustice would not result from retention of records of nonconviction arrests, it does not follow that "innocent" should be construed as to include a pardon in light of the fact that § 4372 of this chapter permits expungement only in three specific circumstances. State v. Skinner, Del. Supr., 632 A.2d 82 (1993).

#### **§ 4374 Disclosure of expunged records.**

(a) Except for disclosure to law-enforcement officers acting in the lawful performance of their duties in investigating criminal activity or for the purpose of an employment application as an employee of a law-enforcement agency, it shall be unlawful for any person having or acquiring access to an expunged court or police record to open or review it or to disclose to another person any information from it without an order from the Court which ordered the record expunged.

(b) Where disclosure to law-enforcement officers in the lawful performance of their duties in investigating criminal activity is permitted by subsection (a) of this section, such disclosure shall apply for the purpose of investigating particular criminal activity in which the person, whose records have been expunged, is considered a suspect and the crime being investigated is a felony or pursuant to an investigation of an employment application as an employee of a law-enforcement agency.

(c) Nothing contained in this section shall require the destruction of photographs or fingerprints taken in connection with any felony arrest and which are utilized solely by law-enforcement officers in the lawful performance of their duties in investigating criminal activity.

(d) Nothing herein shall require the destruction of court records or records of the Department of Justice. However, all such records, including docket books,

relating to a charge which has been the subject of a destruction order shall be so handled to ensure that they are not open to public inspection or disclosure.

(e) An offense for which records have been expunged pursuant to this section shall not have to be disclosed by the person as an arrest for any reason.

(f) Any person who violates subsection (a) of this section shall be guilty of a class B misdemeanor, and shall be punished accordingly.

(62 Del. Laws, c. 317, § 2.)